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UNCLAS SECTION 01 OF 07 TAIPEI 000178

SENSITIVE

STATE FOR EAP/RSP/TC, EAP/EP
STATE PLEASE PASS USTR
USTR FOR RAGLAND AND ALTBACH
USDOC FOR 4430/ITA/MAC/AP/OPB/TAIWAN
USDOC ALSO FOR ITA/MAC/OIPR
USDOC FOR USPTO GIN, BROWNING, AND SNYDOR

SIPDIS

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [TW](#)

SUBJECT: Taiwan IPR: 2010 301 Watch List Submission

REFTEL:

- A) 2008 Taipei 49
- B) 2008 Taipei 1655
- C) Taipei 17
- D) 2009 Taipei 26
- E) 2007 Taipei 2442
- F) 2007 Taipei 2498
- G) 2009 Taipei 249
- H) 2007 Taipei 2529
- I) 2007 Taipei 2595
- J) 2007 Taipei 2005

Overall Assessment: No Watch List for Taiwan

1. (SBU) The Taiwan authorities continued to strengthen intellectual property rights (IPR) enforcement over the past 12 months. The specialized IP Court, which began accepting cases in July 2008, adjudicated 1007 cases in 2009. The Legislative Yuan (LY) passed ISP-related amendments to the Copyright Law that clarify ISPs' responsibilities to protect copyrighted materials, limit an ISP's liability if the provider quickly removed IPR-infringing material, and allow ISPs to terminate or limit service for users who ignore three notices of infringement from the ISP. The Ministry of Education (MOE) took further steps to reduce electronic piracy on Taiwan's campuses, and schools continue to track and punish violations. The Taiwan Intellectual Property Office (TIPO) submitted to the LY an amended Patent Act that would track more closely with international standards for issuance of compulsory licenses, extend the protection period on pharmaceuticals whose entry into the market is slowed by approval delays, and increase compensation to license-holders for licensing violations. The LY, however, did not act on the bill before the end of the 2009 session.

2. (SBU) However, problems remain. Although physical copying of movies and music continued a decade-long fall, digital piracy of music, movies, and software continues to be a problem. Although Taiwan's software piracy rate dropped slightly to 39 percent--the third-best in Asia behind Japan and Singapore--some software companies' representatives believe that the actual rate is significantly higher. Rights holders continue to cite Taiwan Customs as a weak link in Taiwan's improving efforts against piracy.

3. (SBU) Overall, due to Taiwan's steadily improving IPR environment, AIT thinks Taiwan should not be included on the 2010 Watch List. In 2010, we will encourage Taiwan to enforce newly-enacted Copyright Act amendments, pass amendments to the Patent Act that address industry concerns on compulsory licensing, and continue to combat digital and textbook piracy on university

campuses. End overall assessment.

Ongoing Areas of Review

Notorious Markets

¶4. (SBU) Piracy in Taiwan's night markets has continued a decade-long decline, and there are no "notorious" physical markets. According to the Recording Industry Foundation in Taiwan (RIT), which represents the international recording industry, only Hsin-Ming night market in Taoyuan County is notable for piracy, with three to five stalls selling illegal music and DVDs.

Optical Media

¶5. (SBU) According to RIT and the Taiwan Foundation Against Optical Theft (TFACT, the local arm of the Motion Picture Association), optical disc piracy is no longer a major problem in Taiwan. RIT figures show that as legitimate CD sales in Taiwan have dropped by half since 2005, the percentage of pirated copies has dropped from almost 40 percent to a steady 22 percent over the past three years, a drop RIT attributes to the popularity of digital piracy. TFACT thinks pirated movies have shown a similar decline.

¶6. (SBU) RIT estimates there are no more than 20 physical outlets island-wide for pirated CDs--most of which are night market stalls--down from about 30 in 2007 and 250 a decade ago. Other rights holder groups agree that large-scale production and

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distribution of physically-pirated goods is declining.

¶7. (SBU) According to RIT, the Taiwan police initiated 105 music-related physical piracy cases in Taiwan in 2009, up from 90 in 2008, but lower than 136 and 227 cases in 2007 and 2006, respectively. Rights holder groups believe that most domestic physical movie counterfeiting is now smaller-scale burning of counterfeit DVDs on home computers, with the majority of pirated DVDs coming from the PRC and other overseas mail-order sites that take orders over the Internet and deliver physical copies by mail.

Digital Piracy

¶8. (SBU) Digital piracy of music and movies is the number one concern in Taiwan for movie and music industry groups. Industry statistics, however, show rights holders are becoming more effective at enforcing intellectual property rights. In 2009, RIT sent over 1000 takedown letters asking major Internet service providers (ISPs) and auction sites to remove unauthorized music content. According to RIT, 98 percent of allegedly unauthorized files were removed, up from 91 percent in 2008, and only 80 percent in 2006 and 2007. The local office of the Business Software Alliance (BSA) reports that in 2009, notified ISPs removed unauthorized content in "almost 100 percent" of cases. TFACT figures show a take-down success rate of 82 percent.

¶9. (SBU) Digital piracy prosecutions are also dropping fast: Taiwan prosecuted 73 music-related digital piracy cases in 2009, down from 122 in 2008 and 265 in 2007. RIT's Alex Chen attributes the drop to more successful notice-and-takedown efforts by the recording industry, a greater awareness of intellectual property among the general public, and the increasing availability of legitimate music online. Chen noted, however, that RIT does not believe digital piracy itself is dropping, only that industry is getting better at identifying and taking action against websites hosting copyrighted material.

¶10. (SBU) Taiwan took steps in 2009 to improve its ISP-related legislative framework. In April 2009, the Legislative Yuan (LY) passed amendments to the Copyright Act that clarify ISP's responsibilities to protect copyrighted materials, limit an ISPs'

liability if the provider quickly removed IPR-infringing material, and allow ISPs to terminate or limit service for users who ignore three notices of infringement from the ISP. Taiwan became the second jurisdiction in the world to codify such a "three-strikes" measure. Unfortunately, the law's implementing regulations, which TIPO finalized in November, did not detail how ISPs should define "three strikes." Enforcement of the new law will therefore be uneven across ISP providers.

Digital Piracy - Peer-to-peer

¶11. (SBU) In June 2007, Taiwan passed legislation providing a legal basis for prosecuting online peer-to-peer platforms whose service allows for the exchange of IPR-infringing materials, and by the end of 2007, the authorities had shut down the two largest P2P service providers in Taiwan (ref A). In 2008, the MOE issued increasingly strict Internet guidance to universities, including new rules forbidding all peer-to-peer (P2P) software use except with explicit permission, requiring daily bandwidth limits, and monitoring download volume per student (ref B).

¶12. (SBU) In November 2009, in response to rights holder complaints that P2P violations still occur in student dormitories that use non-TANet, commercial ISPs, the MOE agreed to add an administrative rule requiring universities to ban the use of P2P software on commercial ISPs in university dormitories (ref C).

Software, Including Use and Procurement by Authorities

¶13. (SBU) According to the latest BSA surveys, 39 percent of member-company software used in Taiwan in 2008 was unauthorized. This is a one percentage-point drop from the 2007 figure, and places Taiwan third-best in Asia--behind only Japan and Singapore--and 23rd worldwide.

¶14. (SBU) The true picture of software piracy is likely worse, however (ref D). In a recent meeting, BSA's Taiwan representative told econoff that BSA's survey methodology undercounts the level of

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unauthorized use, including illegal copies, expired licenses, and under-reporting of licensed users. Software company representatives privately estimate to us that 70 to 90 percent of business software in Taiwan is unauthorized. According to rights holders, such unauthorized use of software is common not only in the business community, but also on university campuses and within official agencies.

TRIPS Compliance and Other IPR Issues

¶15. (SBU) In January 2008, the EU completed a Trade Barriers Regulation (TBR) investigation into Taiwan's 2006 decision to issue a compulsory license (CL) to local company Gigastorage to produce CDs using Philips' licensed technology (ref E). The EU report concluded Taiwan's Patent Law is inconsistent with WTO rules on intellectual property, and recommended that the European Commission start WTO proceedings if Taiwan did not take concrete steps to amend its Patent Law within two months.

¶16. (SBU) In response, TIPO drafted amendments to the Patent Act, and in early December, the Executive Yuan (EY) approved the amendments and passed them on to the legislature. The amended Act would bring Taiwan's CL regulations closer to international standards, strengthen patent protection on animals and plants for bio-tech development, extend the protection period--for up to five years--on pharmaceuticals whose entry into the market is slowed by Taiwan authority approval delays, and more clearly spell out compensation formulae for licensing violations.

¶17. (SBU) AIT contacts at Philips recently told us the amended texts are satisfactory, a view that the Deputy Head of the European Economic and Trade Office in Taiwan echoed to econoff in January.

The LY, however, was unable to pass the amendments before its autumn session ended in January 2010. TIPO's Deputy Director General, Margaret Chen, recently told econoff that the LY would "certainly" take up the amendments again in the spring session, and will likely pass them.

Data Protection -----

¶18. (U) Taiwan has three laws that cover data protection: the Personal Data Protection Law, the Trade Secrets Act, and the Integrated Circuit Layout Protection Act. AIT has heard no complaints from industry about problems with data protection in Taiwan.

Data Protection - Pharmaceuticals -----

¶19. (U) To satisfy TRIPS Article 39.3, in January 2005, Taiwan revised the Pharmaceutical Affairs Law to provide for five years of data protection in order to prevent unfair commercial use of test data submitted by pharmaceutical companies for marketing approval from regulatory authorities. In early December 2009, the EY approved proposed amendments to the Patent Act that would extend this protection period up to five more years if the Taiwan regulatory process delays a patented medicine's entry onto the market. According to TIPO, the LY will consider the amendment in the spring legislative session.

¶20. (U) The current Law allows competitors to refer to the originators' data and submit generic filings three years after the originator gains market approval, and requires drug companies to register a new product in Taiwan within three years of the product's release in an advanced-country market.

21 (SBU) However, the Law only covers new chemical entity products, and not new indications for previously-developed drugs. In addition, the Law limits the applicability of data protection to registrations filed within three years--from the first approval granted anywhere in the world--for a product based on that new chemical entity, which industry claims is inconsistent with the objectives of TRIPS data protection rights, and may not effectively prohibit premature commercial use, especially for new indications of older drugs.

Data Protection - Patent Linkage -----

¶22. (SBU) Taiwan has not yet established patent linkage in the regulatory procedures for approving generics (ref F), which means

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that a generic drug can get drug marketing approval from the Taiwan Department of Health and a reimbursement price from the Bureau of National Health Insurance before the original drug's patent has expired.

¶23. (SBU) Under a 2005 revision to the Pharmaceutical Affairs Law, the Taiwan authorities require patent-owners to register a drug's patents when the patent-owners receive the product license in Taiwan. Therefore, data similar to that submitted in the "Orange Book" system in the United States is available to the Taiwan authorities. However, Taiwan has no plans to implement a U.S.-style patent linkage system.

Production, Import, and Export of Counterfeit Goods -----

¶24. (SBU) Most large-scale pirating of optical media, software, and clothing has shifted to other locations in Asia. Over the past decade, enforcement authorities have increased the frequency and effectiveness of raids against night markets and large-scale optical media factories, significantly reducing the number of pirated products for retail sale. In response, IP pirates have shifted from large optical media plants to small, custom optical-media burning operations, often for home delivery and sale over the Internet, or

have shifted production overseas.

¶25. (SBU) Infringement of trademarked goods, such as cigarettes, clothing, handbags, watches, and footwear, is also an area of concern in Taiwan. In 2009, infringement-related cases and arrests both rose from the previous year: police filed 1040 cases last year, a 19.13 percent jump from 2008, and arrested 1,180 suspects, up 23.17 percent from 2008. The jump may, however, simply be a return to previous levels, because 2008 cases and arrests were down 27 percent and 25 percent from 2007, respectively.

¶26. (U) Taiwan Customs reported that the number of seizures of counterfeit branded goods increased in 2009 to 270 cases from 226 cases in 2008. There were 300 seizures in 2007. Taiwan Customs impounded 1,215,282 items in 2009, compared to 1,104,557 items in 2008, and 4,446,506 items in 2007. As in 2008, counterfeit cigarettes accounted for 85 percent of seized goods, with clothes and medicines making up three percent each, and auto parts, footwear, and leather products for about one percent each or less.

¶27. (U) In 2009, Taiwan Customs recorded only three cases of export commodities found to infringe trademarks--down from four cases in 2008--although the 102,672 trademark-violating individual goods seized in the 2009 cases were a 78-percent increase from the 57,626 items seized in 2008.

¶28. (U) Under its Optical Disk Law, Taiwan routinely inspects exports of disks and disk-manufacturing equipment. In 2009, Customs found only 15 illegal export cases involving optical disks--down from 31 cases in 2008--none of which were disks suspected of violating copyrights. Instead, all 15 cases involved false declarations of export quantity.

¶29. (SBU) Original-drug manufacturers remain concerned about counterfeit drugs, but for the third year in a row, the AmCham Pharmaceutical Committee's annual policy priority paper ranked the issue last in importance, below other IPR issues such as patent linkage and data exclusivity.

Enforcement: Police and Courts Good, Sentences Still Light

¶30. (U) Taiwan's Joint Optical Disk Enforcement (JODE) Task Force conducted 820 inspections of optical disk manufacturers in 2009--over half during non-work hours--and found only two violations of Taiwan law. Similar raids in 2006, 2007, and 2008 found no violations of Taiwan law.

¶31. (SBU) Continuing a recent downward trend (ref G), in 2009, the IPR Police conducted 16.48 percent fewer raids (5241 in total) than in 2008, and began 5.5 percent fewer infringement cases. Arrests, however, were down less than one percent, suggesting the police have improved targeting.

¶32. (U) Seizures of counterfeit goods declined in all major categories from 2008 to 2009, with pirated music, movie, and software/video-game disk seizures down 17.8 percent, 11.2 percent, and 19 percent, respectively. These numbers reflect the increasingly digital nature of piracy in Taiwan.

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¶33. (SBU) As in previous years, very few successful IPR-related prosecutions result in jail time for violators. In 2009, Taiwan courts handed down 29 percent fewer sentences for IPR-related crimes (1,768) than in 2008 (2,497). As in 2008, the vast majority--92 percent--of cases in 2009 resulted in a fine or a jail term of six months or less. [Note: In Taiwan, jail terms of six months or less are almost automatically converted into fines. End note.]

¶34. (SBU) The long-awaited specialized IP Court started accepting cases in July 2008 (ref F), and by year's end had received 694 cases. In 2009, the IP Court handled 1878 cases, and closed out ¶1364. The Court accepts first-instance and appeals civil and administrative cases, as well as criminal case appeals. AIT industry and Ministry of Justice (MOJ) contacts have praised the Court for

its knowledgeable experts, and note the IP Court is handling cases faster than non-specialized courts (ref D).

Enforcement: Customs

135. (SBU) Movie, music, and software rights holders--along with pharmaceutical companies--continue to complain that Taiwan Customs is a weak link in Taiwan's relatively good efforts against piracy (ref D). Industry representatives tell us pharmaceuticals, music, and movies are commonly sent to Taiwan by mail-order in small batches--the majority from China, but also from South East Asia--but Customs officials do not seem willing to spend time seizing these smaller quantities of counterfeits. Rights holders attribute this reluctance to Customs officers wanting to avoid the large amount of paper work required for even relatively small seizures, as well as a lack of manpower available for follow-up investigations.

136. (SBU) Changes to the copyright law in 2004 allowed for ex officio inspections by Taiwan Customs, but the law requires rights holders to verify within a short period that the seized materials are counterfeit. Although TFACT and other rights holders report to us that they routinely send personnel to Taoyuan International Airport and other ports of entry to verify the authenticity of suspect parcels, Customs tells us some rights holders are not responsive to requests to verify suspect trademark violations.

137. (SBU) AmCham Taipei's IPR Committee also considers Customs enforcement relatively weak. The Committee's 2010 draft White Paper on IPR issues recommends Taiwan broaden and streamline Customs inspection and seizures. AmCham calls for:

--A more organized, speedy, and transparent system for investigating and prosecuting suspected importers of counterfeit or smuggled goods.

--More disclosure of information related to Customs seizures, including basic information on importers and exporters.

--A database of fined, convicted, and/or suspected importers of counterfeit and smuggled goods that could be shared, monitored, and added to by Customs, the Judicial Yuan, the Taiwan Intellectual Property Office (TIPO), the Ministry of Justice, the Ministry of Interior, and the Ministry of Finance.

--More training for Customs officials on recognizing counterfeit and smuggled goods.

--An online database of trademarks, copyrights, and brands--including images of trademarks and brands, contact information of rights holders, countries of production, and licensees--available to Customs personnel as they inspect shipments at the ports of entry.

--Increased inspections of postal and express mail service packages.

Campus Anti-Piracy Efforts

138. (SBU) In early 2007, the Ministry of Education (MOE) started a three-year Campus IP Action Plan to combat IPR violations at Taiwan's universities (ref H). Under the Plan, the MOE maintains IPR-related requirements and targets for Taiwan universities, and publicly grades each university's performance on numerous metrics in order to promote best practices and shame less successful schools into taking more action. In 2008, the MOE issued increasingly strict guidance for the Taiwan Academic Network (TANet), the Ministry's island-wide high-school and university intranet, including new rules forbidding all peer-to-peer (P2P) software use except with explicit permission, requiring daily bandwidth limits, and monitoring download volume per student (ref D).

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139. (SBU) The Plan--originally intended to run for three years to end-2009--led universities to take tangible steps to deal more seriously with IPR protection, especially in combating unauthorized file-sharing on TANet (refs B, D, and I). The MOE, encouraged by schools' improvements under the Plan and spurred by continual U.S. engagement, decided in November 2009 to continue with the Plan

indefinitely.

Campus Anti-Piracy Efforts - Textbooks

¶40. (SBU) The Action Plan also targets illegal textbook copying. Taiwan university administrators tell us that under the Plan, on-campus copying of textbooks has become less rampant and less visible in Taiwan year on year, especially at on-campus copy shops. They also report off-campus copy shops are either more reluctant to copy textbooks in whole or in part, or have begun to refuse to copy more than a few pages of any one book (ref B).

¶41. (SBU) The Taiwan Book Publishers' Association (TBPA), however, continues to complain that the situation has not improved, but has merely gone underground. According to TBPA's chairwoman, off-campus copy shops still take orders through representatives on campus and standing student relationships, then deliver books directly to customers.

TPBA, however, does not have direct evidence to back up the organization's claims: in a repeat of results from the three preceding years, Police copy-shop raids at the beginning of the 2009 fall semester failed to turn up significant amounts of violating materials.

¶42. (SBU) To bolster TBPA's claims about widespread textbook piracy, the Association asked professors Yu Ching-hsiang and Cheng Yu-ting of National Chengchi University to undertake a survey of over a thousand students at 20 Taiwan colleges. According to the survey, 52 percent of Taiwan college students admit to having photocopied at least one entire textbook. A similar survey in 2007 showed that roughly half of college students buy pirated versions of some books and supplementary materials (ref J).

Treaties

¶43. (U) Taiwan is not a member of the United Nations and is therefore not a signatory to the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT). However, Taiwan abides by the terms of both treaties.

Sour Note: Collective Management

¶44. (U) ON January 12, the LY passed amendments to the Copyright Act and the Copyright Intermediary Organization Act (now known as the Copyright Collective Management Act, or CCMA). The Copyright Act amendments exempt owners of restaurants and other public venues, television content providers, and broadcasting stations from criminal, though not civil, responsibility for unwittingly rebroadcasting materials that violate copyright.

¶45. (SBU) The amendments to the Copyright Collective Management Act (CCMA) allow users to pay a TIPO-determined licensing rate to the rights holder if the user and the rights holder's designated collective copyright management organization (CMO) are not able to reach agreement on a rate. CCMA amendments mandate a single CMO contact window for users, ban rights holders or CMOs from using commissioned agents to collect licensing fees, and require rights holders to set a single rate for identical content provided through different artist management agencies.

¶46. (SBU) Music rights holders in Taiwan are not happy about the changes. According to RIT's Lee, removing criminal liabilities for rebroadcasting violating works is a step backwards in enforcement. Lee agrees it makes sense to set a single licensing window for users' convenience, but thinks this should be set up on a volunteer basis among CMOs and users. RIT also fears TIPO-imposed licensing rates will be unfairly low, and thinks that, due to the large number of potential broadcasting venues in Taiwan--including stores, restaurants, schools, karaoke bars, and clubs--rights holders will not be able to collect fees efficiently without using commissioned agents.

Comment

147. (SBU) Taiwan continues to build on the significant progress identified in last year's report, including passing tough new ISP-related digital piracy amendments, and indefinitely extending the Campus IP Action plan.

We assess that the Taiwan authorities will continue to support effective IPR policies, including efforts to reduce piracy on campuses. In 2010, we will press Taiwan to enforce newly-enacted Copyright Act amendments, pass amendments to the Patent Act that address industry concerns on compulsory licensing, and continue to combat digital and textbook piracy on university campuses.

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